

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
Commissioner
Commissioner
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In the Matter of the Petition of the Minnesota
Department of Commerce Regarding
Regulation of Inmate Telephone Service

ISSUE DATE: July 26, 2007

DOCKET NO. P-999/DI-07-204

ORDER AFFIRMING AND MODIFYING
REGULATORY TREATMENT OF INMATE
TELEPHONE SERVICE PROVIDERS

PROCEDURAL HISTORY

In late 2006, the Department of Commerce (the Department) received a complaint regarding the charges imposed by an inmate telephone service provider that operates a phone system for a county jail in the Twin Cities metropolitan area.

On April 26, 2007, the Commission issued an Order Opening Generic Docket on Inmate Telephone Service in this docket, to refresh the record on inmate telephone service, last addressed by the Commission in 1992-1993. The Commission requested telecommunication carriers which are inmate telephone service providers to provide information in response to the following questions:

- Does state law still require inmate telephone service providers to obtain a certificate of authority because they offer “telephone” or “telecommunications” service in Minnesota?
- If state law requires these carriers to obtain a certificate of authority, what type of certification should they receive?
- If inmate telephone service providers must be certified, how should they be further regulated?
- Inmate telephone service providers should list where they operate in Minnesota, and what rates they charge. Inmate telephone service providers should also comment on whether the twelve requirements established by the Commission in Docket No. P-999/CI-91-22 continue to be relevant today.

The following inmate telephone service providers filed comments:

- Value Added Communications;
- Evercom Systems, Inc. and T-NETIX, Inc. (E & T) - (filed joint comments);
- ITI Inmate Telephone;
- Global Tel*Link Corporation;
- Network Communications International;
- Inmate Calling Solutions;
- Qwest Corporation.

On May 17 and 29, 2007, the Department filed comments and recommendations.

On July 3, 2007, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Positions of the Parties

The inmate telephone service providers who responded to the Commission's request for comments generally agreed that the existing regulation of inmate phone service is sufficient, and that there was no need for further regulation at this time.

The Department recommended that the Commission:

- 1) Find that inmate telephone service providers are required to obtain a certificate of authority with the Commission;
- 2) Require inmate telephone service providers to obtain competitive local exchange company (CLEC) certification, but grant a variance of the requirements to receive Commission approval of a 911 plan and interconnection agreement;
- 3) Require inmate telephone service providers to file a tariff for their services;
- 4) Regulate inmate telephone service providers' long distance rates in the same manner as other long distance rates, and their local rates in the same manner as other local rates;
- 5) Require inmate telephone service providers to state their identity at the beginning of each call, including: a) the identity of the inmate telephone service provider; b) the fact that the call is originating from a correctional institution; and c) a mechanism to obtain additional information about the provider (such as an instruction to press "1" to obtain a telephone number to reach the provider for questions);
- 6) Require inmate telephone service providers to bill the end user within 90 days of the date of the call;
- 7) Prohibit inmate telephone service providers from billing for unanswered calls;
- 8) Require inmate telephone service providers to provide, upon request, all rate information, including all recurring and nonrecurring charges that will be assessed for the call, to the end user, prior to the end user accepting the call;
- 9) Prohibit all local exchange carriers from disconnecting local service for the nonpayment of inmate telephone service charges; and
- 10) Require inmate telephone service providers to comply with other applicable requirements, including but not limited to filing annual reports.

II. Commission Analysis and Action

A. State Law Requires Inmate Telephone Service Providers to Obtain a Certificate of Authority

The Commission acknowledges the need to refresh and clarify the record on inmate telephone service, recognizing that many changes have occurred in the telecommunications industry and applicable state laws¹ since it issued its inmate telephone service orders in 1992-1993.²

At that time, inmate phone service providers, because of the underlying technology of providing inmate phone service, were joined with coin-operated and public pay telephone service and required a certificate of authority. With the passage of Minn. Stat. § 237.036 in 1999, however, Commission approval or receipt of a certificate of authority for coin-operated or public pay telephone service was no longer necessary, and registration alone was required.

E & T claim that the Commission now lacks jurisdiction over inmate telephone services because the Minnesota Legislature deregulated payphone service. While it is certainly correct that payphone service has been deregulated, the Commission is convinced that inmate telephone service bears little resemblance to conventional payphone or coin-operated service, and concludes that the changes in state law with respect to coin-operated and public payphones have not exempted inmate telephone service from the Commission's certification process.

The rationale for exempting payphones from regulation was essentially the ubiquity of competition and technological progress. Consumer choice was readily available, and little need existed for continued regulation. That rationale clearly does not apply to the limited service and literally captive consumers incarcerated in correctional facilities who have no opportunity to dial around the operator service provider or access other carriers. Nor does it apply to the recipients of the inmate telephone communications, who, in the case of collect calls from an inmate, pay for the calls,³ but who have no opportunity to choose the service provider, or to avoid or minimize inmate-initiated calls.

Certainly, the public interest clearly requires regulation of inmate telephone service, and it would be unreasonable to construe payphone deregulation as including inmate telephone service.

After careful consideration, the Commission is satisfied that regulation of inmate service providers is unlike coin-operated or public pay telephone services, and that a certificate of authority is necessary. Inmate telephone service providers offer "telephone" or "telecommunications" service, including the provision of local and long distance service, both of which are regulated under Minn. Stat. Chapter 237.

¹ See, e.g., Minn. Stat. § 237.036 (exemption of payphone providers from certification); Minn. Stat. § 237.74 (reduced rate regulation for telecommunications carriers); Minn. Stat. § 237.16 (changes in the requirements and process for obtaining a certificate of authority); and Minn. Rules §§ 7811.0200, subp. 2 and 7812.0200, subp. 2 (establishment of four categories of certificates of authority).

² Docket No. P-999/C-91-22.

³ Certain rate plans, however, are available that provide the inmate the opportunity to pre-pay for calls.

B. Category of Certificate of Authority Required

Having determined that inmate telephone service providers must obtain a certificate of authority, the Commission next must address the form of regulation the certificate should take. The Commission concludes that the appropriate form of regulation most closely resembles the competitive local exchange model.

Like competitive local exchange companies, inmate phone service providers are front-line providers of local and long distance service to a specific set of consumers.⁴ The Commission therefore will regulate inmate telephone service providers in a manner similar to competitive local exchange carriers, while recognizing certain inherent distinctions.

Many of the more extensive filing requirements applicable to competitive local exchange companies simply will not apply to the limited form of service provided by inmate phone service providers. For example, the development of 911 plans, approval of interconnection agreements, and posting of notices (of rates and how to dial around the operator) are not available services to inmates in correctional facilities,⁵ and the Commission will exempt inmate services providers from compliance with these requirements.

The Commission is cognizant that the certification process outlined herein may require fine-tuning at a later date, after initial filings pursuant to these requirements have been undertaken and evaluated. For the present, however, inmate service provider filings should be as closely matched as feasible to competitive local exchange filings required pursuant to Minn. Rules Parts 7811 and 7812, recognizing the specific exemptions set forth herein.

C. Modifications to the Requirements Imposed in Docket P-999/CI-91-22

The Commission modifies the twelve requirements established by the Commission in Docket No. P-999/CI-91-22 to reflect changes in the telecommunications environment that have occurred. The Commission hereby adopts and incorporates the Department's recommended changes as set forth below:

- 1) Inmate telephone service providers must obtain a certificate of authority with the Commission to provide payphone and operator service.***

The Commission clarifies that inmate phone service providers need telephone service certification as a subset of CLEC providers. Already certificated providers that offer inmate telephone service will simply be bound by the requirements established in this Order.

- 2) Inmate telephone service providers must file a tariff.***

Carriers subject to the Commission's jurisdiction must tariff their services as required by statute. Inmate telephone service providers will be required to file tariffs.

⁴ See, e.g., Minn. Stat. §§ 237.16 (local) and 237.74 (long distance).

⁵ See, e.g., Minn. Rules 7811.0550, 7811.0600, 7812.0550 and 7812.0600

- 3) ***Inmate telephone service providers' rates for long distance calls must not exceed AT&T's rates for similar calls.***

And,

- 4) ***Inmate telephone service providers' rates for local calls must not exceed the highest rate for a similar call approved by the Commission.***

Since the Commission established these requirements in 1991, rate regulation for telephone companies and telecommunications carriers has changed significantly. CLECs' local rates generally are not regulated, except upon complaint. Telecommunications carriers' long distance rates are generally not regulated, with the exception of a prohibition against unreasonably discriminatory pricing.

The Commission will replace these former requirements with requirements that are consistent with today's regulation. Long distance rates of inmate telephone service providers may be regulated in the same manner as long distance rates of other telecommunications carriers, and the local rates of inmate telephone service providers may be regulated only upon complaint. If a qualified complainant makes such a filing in the future, the Commission will take any information it receives at that time in deciding whether the carrier's rates are in compliance with applicable regulatory requirements.

- 5) ***Inmate telephone service providers must state their identity at the beginning of the call.***

The Commission will maintain this requirement and will establish a standard for what constitutes adequate identification by the carrier. The following information should be provided to the called party prior to the party agreeing to accept the call: 1) the identity of the inmate service provider; 2) the fact that the call is originating from a correctional institution; and 3) a mechanism to obtain additional information about the provider (for example, an instruction to press "1" to obtain a telephone number to reach the inmate telephone service provider for questions).

- 6) ***Inmate telephone service providers must bill the end user within 90 days of the date of the call.***

The Commission will retain the 90 day billing requirement with the understanding that carriers that out source their billing function should be able to require the contracting entity to bill within a certain specified period of time. Lengthy billing delays promote confusion and compromise consumers' ability to dispute a bill.

- 7) ***Inmate telephone service providers must submit samples of their bills.***

And,

- 8) ***Inmate telephone service providers must place their names on the bills they send to end users.***

The Commission's rules do not require any other type of certificated carrier to submit samples of their bills. However, bill copies have been provided upon request to the Department if it becomes aware of a problem or potential problem related to a

carrier's bill. The Commission will treat inmate telephone service providers consistently with all other providers; the Department or Commission may at any time request and receive copies of the bill on which the provider's charges are shown.

9) *Inmate telephone service providers cannot bill for unanswered calls.*

The Commission will retain this requirement as consistent with Minnesota law and Federal Communication Commission (FCC) regulations.

10) *Inmate telephone service providers must provide rate information to end users to the extent it is technologically feasible.*

The Commission retains this requirement and strengthens it to state: "Inmate telephone service providers must provide upon request, all rate information, including all recurring and non-recurring charges that will be assessed for the call, to the end user, prior to the end user accepting the call."

11) *Inmate telephone service providers may not include call aggregators' surcharges or other charges not approved by the Commission for inmate service.*

The Commission notes that due to changes in telecommunications regulation, many of the rates charged by local service providers and interexchange carriers no longer must be formally approved by the Commission, although these charges must be included in a prefiled tariff. To remain consistent with the regulation of other certificated carriers, the Commission will eliminate this requirement. However, carriers must still comply with other applicable requirements related to these charges, such as those relating to tariffing and rate disclosure.

12) *All local exchange carriers are prohibited from disconnecting local service for the nonpayment of inmate telephone service charges.*

The Commission adopts the Department's recommendation to retain this requirement.⁶

In conclusion, the Commission notes that the requirements listed here do not constitute an exhaustive list of all requirements applicable to inmate telephone service providers. For example, as certificated carriers, inmate telephone service providers must also file annual reports with the Department, and comply with any other applicable consumer protection and regulatory requirements.

⁶ The Commission has previously retained this requirement for local exchange carriers in Minn. Rules part 7812.0600, subp. 7, and 7811.0600, subp. 7. No local exchange carrier has requested a variance of this rule.

In addition, the FCC has an open docket, which considers the possible imposition of new regulatory requirements to interstate calls made by inmate telephone service providers.⁷ If the FCC imposes additional regulatory requirements on interstate inmate telephone calls, the Commission may at that time re-consider its own requirements depending upon their relevancy to the FCC's pending rulings.

The Commission will so order.

ORDER

1. Inmate telephone service providers shall obtain a certificate of authority similar to a CLEC service provider.
2. The Commission hereby modifies the twelve requirements established by the Commission in Docket No. P-999/CI-91-22 as set forth herein.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 201-2202 (voice) or 1-800-627-3529 (MN relay service).

⁷ The petition to revise the FCC's rules on inmate phone service was first filed November 3, 2003, and assigned to CC Docket No. 96-128. The petition requested that the FCC prohibit exclusivity arrangements between private prisons and inmate telephone service providers. The FCC has not ruled on the issue. An "alternate" petition was filed March 1, 2007, requesting instead that the FCC cap or set benchmarks for interstate inmate calls.